

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	
BERNARD L. MADOFF INVESTMENT SECURITIES LLC,	Adv. Pro. No. 08-01789 (SMB)
Debtor.	SIPA LIQUIDATION (Substantively Consolidated)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,	
Plaintiff,	
v.	
Estate of Herman Greenberg, et. al.,	Adv. Pro. 10-04998 (SMB)
Defendants.	

**STIPULATION AND ORDER REGARDING
DEFENDANTS' MOTION TO DISMISS**

The Defendants filed a motion to dismiss (the “Motion to Dismiss”) the Amended Complaint filed against them by Plaintiff Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”) and the substantively consolidated estate of Bernard L. Madoff (the “Complaint”).

On January 17, 2014 and March 10, 2014, the Trustee and the Securities Investor Protection Corporation (“SIPC”) filed separate memoranda of law opposing the Motion to Dismiss (the “Opposition Briefs”). On or before March 17, 2014, the Defendants filed a reply brief in further support of their respective Motion to Dismiss (the “Reply Brief”).

On September 17, 2014, a hearing on some arguments raised in the Motion to Dismiss was held by the Honorable Stuart M. Bernstein (the “Hearing”). The Court, having reviewed the Motion to Dismiss, the Opposition Briefs, the Reply Brief, and having heard the argument of counsel at the Hearing, granted in part and denied in part the Motion to Dismiss for reasons set forth in its Memorandum Decision Regarding Omnibus Motions to Dismiss (the “Decision”) entered June 2, 2015.

On June 22, 2015, the Supreme Court of the United States denied certiorari of the Trustee’s appeal of *SIPC v. Ida Fishman Revocable Trust*, 14-1128 and *Picard v. Ida Fishman Revocable Trust*, 14-1129 (the “Supreme Court Decision”), and thus section 546(e) of the Bankruptcy Code applies to the Amended Complaint.

Accordingly, it is hereby stipulated and agreed that:

1. Pursuant to the Decision and the Supreme Court Decision, counts in the Amended Complaint, other than those seeking to avoid and recover initial and subsequent transfers pursuant to sections 548(a)(1)(A), 550, and 551 of the Bankruptcy Code, are hereby dismissed.
2. As to counts in the Amended Complaint in which the Trustee sought to avoid obligations pursuant to sections 548(a)(1) and 544 of the Bankruptcy Code, applicable provisions of SIPA including sections 78fff(b) and 78fff-1(b) and New York Debtor and Creditor Law (the “Obligations Counts”), the Motion to Dismiss is granted with respect to the Obligations Counts and such counts are hereby dismissed.
3. Pursuant to page 4 of the Decision, the Court ordered that those issues not addressed in the Decision will be heard separately upon scheduling of the parties.
4. The sole issue remaining with regard to Defendants’ Motion to Dismiss which was not addressed in the Decision is the Defendants’ argument that the Trustee’s claims are

barred due to the Trustee's failure to comply with the District of Columbia's Nonclaims Statute (the "Remaining Issue"). In all other respects, the Motion to Dismiss is denied.

5. The Trustee and the Defendants hereby stipulate that the Remaining Issue will be scheduled for hearing before the Court either upon a mutually convenient date for the Trustee and Defendants or upon further order of the Court.

6. The Trustee and Defendants stipulate that the date upon which the Defendants will file an Answer to the Amended Complaint, if any, will be determined following a hearing before the Court on the Remaining Issue or upon further order from the Court.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: July 15, 2015

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Attorneys for Defendants

SO ORDERED

Dated: New York, New York

/s/ STUART M. BERNSTEIN

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July 15th, 2015

HONORABLE STUART M. BERNSTEIN

UNITED STATES BANKRUPTCY JUDGE